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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 179.

CALVIN HOOD, PLAINTIFF IN ERROR,

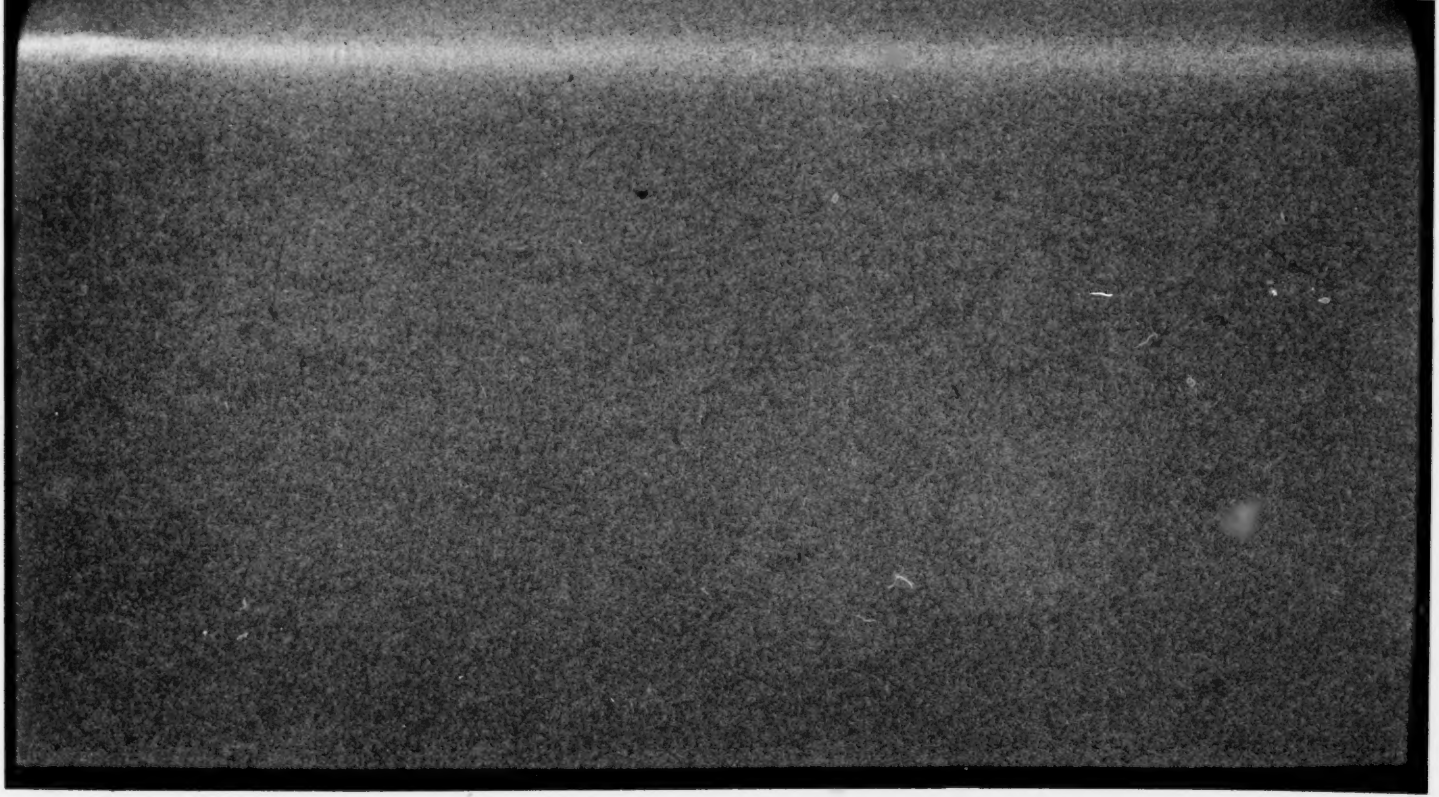
vs.

T. B. WALLACE, AS RECEIVER OF THE MISSOURI NATIONAL BANK OF KANSAS CITY, MISSOURI.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED JANUARY 8, 1900.

(17,601.)



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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 2, 1900.

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a Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the May term, 1899, of said court, begun and held at the United States court-house, in the city of St. Paul, Minnesota, on the first Monday in May, to wit, the first day of May, A. D. 1899, before the Honorable Henry C. Caldwell, Honorable Walter H. Sanborn, and Honorable Amos M. Thayer, circuit judges.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals, Eighth Circuit.

Be it remembered that heretofore, to wit, on the twentieth day of February, A. D. 1899, a transcript of record, pursuant to a writ of error directed to the circuit court of the United States for the district of Kansas, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit, in the case of Calvin Hood, plaintiff in error, *vs.* T. B. Wallace, as receiver of the Missouri National Bank of Kansas City, in the State of Missouri; which said transcript as printed, pursuant to the stipulation of the parties, for the use of the court on the hearing of said cause is in words and figures following, to wit:

1 United States Circuit Court of Appeals, Eighth Circuit.

CALVIN HOOD, Plaintiff in Error,
vs.
T. B. WALLACE, as Receiver of the Missouri National Bank of Kansas City, in the State of Missouri, Defendant in Error. } No. 1222.

Stipulation as to Printing Record.

It is hereby stipulated and agreed by and between the parties to this action, that the record printed by the clerk of the court shall consist of the following parts of the transcript, filed February 20th, 1899, and that the clerk of the court in complying with the rules of the court in printing said record is authorized to have said record printed according to the terms of this stipulation.

1. Complaint (page 1).

2. Substituted and amended answer and cross-petition, filed August 15, 1898 (page 48). Said amended and substituted answer shall contain the amendment filed by stipulation of parties, which appears at page 85 of the transcript, as though said amendment had been originally incorporated in and was a part of the substituted and amended answer and cross-petition when it was filed August 15, 1898.

3. Demurrer to substituted and amended answer and cross-petition (page 61).

4. Order sustaining demurrer to the substituted and amended answer (page 83).

4*a*. Stipulation waiving jury (page 84).
5. Judgment (page 87).
5*a*. Petition for writ of error (page 89).
6. Assignment of errors (page 88).
6*a*. Order allowing writ of error (page 90).
6*b*. Bond on writ of error (page 91).
7. Clerk's certificate of transcript (page 93).

C. N. STERRY AND
I. E. LAMBERT,
Att'ys for Pl'ff in Error.
W. C. COCHRAN,
Of Counsel for Def't in Error.

2 No. 1222. Calvin Hood *vs.* T. B. Wallace, receiver, etc. Stipulation as to printing record. Filed Mar. 14, 1899. John D. Jordan, clerk.

United States of America to T. B. Wallace, as receiver of the Missouri National Bank of Kansas City, in the State of Missouri, Greeting:

You are hereby cited and admonished to be and appear in the United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, sixty days after the day this citation bears date, pursuant to writ of error filed in the clerk's office of the circuit court of the United States for the district of Kansas, eastern division, wherein C. Hood is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said C. Hood, plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Amos M. Thayer, judge of the U. S. circuit court, this 24th day of January, A. D. 1899.

AMOS M. THAYER,
Judge of Cir. Court of U. S., 8th Circuit.

Service of the above and foregoing accepted this 2d day of February, 1899.

J. McD. TRIMBLE,
Per C. A. BRALEY.

No. 7543. United States circuit court for the district of Kansas, eastern division. C. Hood, plaintiff in error, *vs.* T. B. Wallace, receiver, etc., defendant in error. Citation. Filed Jan. 24, 1899. Geo. F. Sharitt, clerk.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the circuit court of the United States for the district of Kansas, first division, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said United States circuit

court, before you, at the November term, 1898, thereof, between T. B. Wallace, as receiver of the Missouri National Bank of Kansas City, in the State of Missouri, as plaintiff, and C. Hood, as defendant, a manifest error hath happened, to the great damage of the said C. Hood, defendant, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected,
3 and full and speedy justice done to the parties in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals, for the eighth circuit, together with this writ, so that you have the said record and proceedings aforesaid at the city of St. Louis, Missouri, and filed in the office of the clerk of the United States circuit court of appeals, for the eighth circuit, on or before the 25 day of March, 1899, to the end that the record and proceedings aforesaid being inspected, the United States circuit court of appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 24th day of January, in the year of our Lord one thousand eight hundred and ninety-nine. Issued at office in Topeka, Kansas, with the seal of the circuit court of the United States for the judicial district of Kansas (first division), and dated as aforesaid.

The Seal of the Circuit Court of the United States, District of Kansas, 1862.

GEO. F. SHARITT,
Clerk of the Circuit Court of the United States for the District of Kansas (First Division).

Allowed by—
AMOS M. THAYER,
U. S. Circuit Judge.

January 24th, '99.

UNITED STATES OF AMERICA, *District of Kansas,* } *ss:*

In obedience to the command of the within writ, I herewith transmit to the United States circuit court of appeals, a duly certified transcript of the record and proceedings in the within-entitled case, with all things concerning the same.

In witness whereof, I hereto subscribe my name and affix the seal of the circuit court of the United States for the district of Kansas, first division.

The Seal of the Circuit Court of the United States, District of Kansas, 1862.

GEO. F. SHARITT,
Clerk of the Circuit Court of the United States for the District of Kansas, Eastern Division.

No. 7543. United States circuit court for the district of Kansas, eastern division. C. Hood, plaintiff in error, *vs.* T. B. Wallace,
4 receiver, etc., defendant in error. Writ of error. Filed Jan. 24, 1899. Geo. F. Sharitt, clerk.

In the Circuit Court of the United States for the District of Kansas, First Division.

THEODERIC B. WALLACE, Receiver of the Missouri National Bank of Kansas City, Missouri, Plaintiff,
vs.
CALVIN HOOD, Defendant.

Petition to Enforce Stockholders' Liability.

Plaintiff for cause of action states, that Missouri National Bank of Kansas City is a corporation organized under the act of Congress of the United States of America, relative to national banks.

That heretofore, to wit: on the 3rd day of December, 1896, plaintiff, Theoderic B. Wallace, was by the Comptroller of the Currency of the United States of America, duly appointed receiver of said Missouri National Bank of Kansas City, Missouri, and duly qualified as such receiver, and as such now has charge of all the property, effects and assets of said Missouri National Bank of Kansas City, Missouri.

Plaintiff is a citizen and resident of the State of Missouri, and defendant is a citizen and resident of the State of Kansas, first division.

At the time of the failure of said Missouri National Bank of Kansas City, Missouri, defendant was the owner and holder of one hundred shares of stock of said bank, of the par value of one hundred dollars ($100) per share.

That heretofore, to wit: on the 30th day of July, 1897, it appearing to the satisfaction of James H. Eckels, Comptroller of the Currency of the United States, that in order to pay the debts of said Missouri National Bank of Kansas City, Missouri, it was necessary to enforce the individual liability of the stockholders thereof as prescribed by sections 5151 and 5234 of the Revised Statutes of the United States, said comptroller, by virtue of the authority vested in him by law, did on the said 30th day of July, 1897, make an assessment and requisition upon the shareholders of the said Missouri National Bank of Kansas City, Missouri, for two hundred and fifty thousand dollars ($250,000) to be paid by them ratably on or before the 30th day of August, 1897, and said comptroller did then and there make demand upon each and every one of the stockholders for one hundred dollars ($100) upon each and every share of the capital stock of said association held and owned by them respectively, at the time of the failure of said bank, and said comptroller
5 did order and direct the plaintiff to take all necessary proceedings, by suit or otherwise, to enforce to the extent aforesaid the individual liability of the said shareholders.

Defendant has been duly notified by plaintiff of said assessment, which said assessment, under the order of the Comptroller of the Currency aforesaid, was due and payable at the office of plaintiff on or before August 30th, 1897.

No part of said assessment has been paid, but the same is now due from defendant for which, to wit, ten thousand dollars ($10,000) with interest at the rate of 6 per cent. per annum from August 30th, 1897, and costs, plaintiff prays judgment.

WM. H. WALLACE,
J. McD. TRIMBLE,
Attorneys for Plaintiff.

Indorsed: No. 7543. Theoderic B. Wallace, receiver of Mo. Nt. Bk. of Kansas City, plaintiff, *vs.* Calvin Hood, defendant. Petition to enforce stockholders' liability. Filed Oct. 30, 1897. Geo. F. Sharitt, clerk. W. H. Wallace, J. McD. Trimble, attorneys for plaintiff.

* * * * * * *

In the Circuit Court of the United States for the District of Kansas, First Division.

THEODERIC B. WALLACE, Receiver of the Missouri National Bank of Kansas City, Missouri, Plaintiff,
vs.
CALVIN HOOD, Defendant.

Amended and Substituted Answer.

Comes now the defendant, Calvin Hood, and by leave of court, alleges and shows to the court the following facts constituting his several defenses to the petition of the plaintiff filed herein:

First.

For his first defense to the several matters and things stated and set forth in the plaintiff's petition, defendant says:

That defendant denies that he is now, or ever has been, the owner of the one hundred (100) shares of stock alleged in plaintiff's petition to belong to him, save and except only as hereinafter fully stated and set forth, and not otherwise.

That a short time prior to the 18th day of April, 1896, D. V. Rieger, who was then president of the Missouri National Bank of Kansas City, Missouri, and had been president of said bank since its organization, solicited this defendant and one Charles J.

6 Lantry, of Strong City, Kansas, to purchase some shares of the capital stock of said bank, and to become stockholders in said bank. That after having submitted to this defendant and the said Lantry the proposition to purchase stock in the Missouri national bank, the said D. V. Rieger acting for and on behalf of the bank, and as its president, and through his and its agents, systematically began making efforts and holding out inducements to said defendant and

Lantry, to purchase said stock. It was persistently urged by the said D. V. Rieger, that it was the desire of the Missouri national bank, which he represented, and of which he was president, to have them own stock of the said bank, and their names connected with it, as they were men of means and large business acquaintance in the State of Kansas, and that their connection with the said bank would be of benefit to it because it would attract and secure a large amount of Kansas business otherwise unobtainable. In said preliminary negotiations for the purchase of such stock in said bank the said D. V. Rieger represented that the bank was in a sound, healthy financial condition, free from debts, earning large profits, and paying dividends, and that he was ready and willing to submit to them a detailed statement showing its financial condition. Having become interested in the statements of said D. V. Rieger, and being induced thereby, this defendant, together with said Charles J. Lantry, called upon the said Rieger at the banking-house of the said Missouri national bank, at Kansas City, Missouri, with a view of investigating the condition of the said Missouri national bank, with the intention that if the condition of it was such as it was represented to be by the said D. V. Rieger, of purchasing some shares of its stock.

Defendant further alleges that the said D. V. Rieger, during these preliminary negotiations, was acting as president of the said bank and for the said bank, and during all the subsequent proceedings and negotiations hereinafter referred to in relation to the purchase of stock, and in the subsequent purchase of such stock of the said Missouri national bank by this defendant, he continued to act as president of the said bank, for the said bank, and with the full knowledge and authority of the said bank, and all the statements made by the said Rieger during the negotiations for the purchase of said stock, were made by the said D. V. Rieger as president of the said bank and with the full knowledge, consent and authority of said bank.

Defendant further alleges that immediately after having made said call at the place of business of the said Missouri national bank, he, the said defendant, and the said Charles J. Lantry, informed the said Rieger that they had been induced by his statements to
7 investigate the condition of the bank with the view of purchasing some shares of its capital stock, and they then and there called on said Rieger for a full and complete history and detailed account of the business and financial condition of the said bank. That said Rieger at once promised to submit to them a faithful statement and history of the bank from its organization down to that time, and further agreed to submit such statement to any expert bank examiner that they might select, if they should desire him to do so. This defendant, together with Charles J. Lantry, then proceeded to investigate the condition of said bank and make full inquiries about its history, which said investigation covered the period of several weeks. The said D. V. Rieger represented to this defendant, while making inquiries into the history of said bank and its condition, that it was originally organized with a capital stock of five hundred thousand dollars ($500,000), all of which

had been actually paid for by the subscribers thereto, and the money deposited as required by the banking laws. That some time in July, 1893, on account of the extreme stringency in money matters and panics, the Missouri national bank suspended, but upon a full investigation of the condition of the bank by the Comptroller of the Currency of the United States, and upon a full report of a national bank examiner submitted to the Comptroller of the Currency, the bank was permitted to resume business. That the Comptroller of the Currency required the bank to reduce its capital stock to the extent of two hundred and fifty thousand dollars ($250,000), to cover any loss the bank might have sustained previous to that time. That this left outstanding the sum of two hundred and fifty thousand dollars ($250,000) of the capital stock, all of which had been actually issued to and paid for by the shareholders in said bank at that time.

That the said D. V. Rieger did then and there submit to this defendant a report by the Comptroller of the Currency, dated July 26th, 1893, in support of his statements, which was in words and figures as follows: "This bank (referring to the Missouri National Bank of Kansas City) suspended on the 17th inst., because of a run on the part of its depositors. There was nothing in its condition to warrant this run or occasion suspicion as to its solvency. It seems to have been prudently managed and its resources are unusually free from items of questionable value, there being no bad debts. The bank is solvent and should be permitted to resume." The said D. V. Rieger did then and there submit to this defendant a bulletin issued by the Comptroller of the Currency dated at Washington, D. C., July 28th, 1893, which was in words and figures as follows: "The Missouri National Bank of Kansas City, Missouri, having complied with the conditions imposed by the Comptroller of the

8 Currency, and its capital stock being unimpaired, has this day been permitted to reopen its doors for business. The bank opens with plenty of money on hand, and is wholly solvent and safe." That said D. V. Rieger represented to this defendant that the facts and statements contained in said report and in said bulletin were absolutely true and correct and that the Missouri national bank had been frequently examined after it had resumed business in July, 1893, by national bank examiners and experts, and that they had uniformly and truthfully reported the bank in good, healthy and prosperous condition. That the bank was entirely free from bad loans or unsecured paper; that all the paper held by the bank was fresh, clean paper and well secured, and that the interest on all the securities of said bank had been promptly paid, and that there was not among the assets of the said bank, a single item or piece of paper that had not been secured and kept alive as provided by the banking laws of the United States. A list of the securities and assets of the bank was submitted to this defendant by the said D. V. Rieger and it was represented by the said D. V. Rieger that each and every item on said list was worth its face value and was fully secured. It was further represented to this defendant by the said D. V. Rieger that the said Missouri national bank was, and

had been since its organization, doing a large and profitable business, accumulating a large surplus and paying an annual dividend of six per cent. to the stockholders.

Defendant further alleges that after he had received said statements from the said D. V. Rieger, he secured the services of two expert bank examiners to examine the assets and condition of said bank in defendant's interest and that the said D. V. Rieger made the same statements and representations about the assets and condition of said bank to these two expert bank examiners that he had made to this defendant, and induced them to believe such statements to be true, and to report to this defendant that such statements were true.

Defendant further alleges that, relying upon the representations of the said D. V. Rieger, so made to this defendant by said Rieger in his capacity as president of the said bank, and believing each, all and every of said representations to be true and correct, he agreed to and with the said Rieger as such president of said bank to and he did then and there attempt to purchase one hundred (100) shares of the capital stock of said bank, which the said Rieger represented was the property of said bank, which he represented to this defendant had been theretofore acquired by the bank in a lawful way, and did then and there pay to the said Rieger for said purchase, and as the price thereof, the sum of ten thousand dollars ($10,000) in cash, and received from the said Rieger a certifi-
9 cate of stock dated the 18th day of April, 1896, and numbered 612, and purporting to be issued by the said bank and under its seal as of that date, and that this certificate represented the one hundred (100) shares of stock that the defendant supposed he was purchasing, being the same stock mentioned and described in plaintiff's petition, for this defendant never at any time nor upon any occasion purchased or attempted to purchase any other stock of said bank for himself, and never at any time received for himself any certificate of stock purporting to be a certificate for stock of said bank other than the said certificate numbered 612.

This defendant further says that the said Missouri national bank received the money so paid by him for the purchase of said stock, to wit: the said sum of ten thousand dollars (10,000) and that the same was for the use and benefit of said bank.

And defendant further says that he continued to be the holder of said certificate of stock so issued and delivered to him as aforesaid without the knowledge or means of knowing that the said Missouri national bank was insolvent until on or about the 2nd day of December, 1896. From the time of the delivery of this certificate of stock to him, said bank was apparently doing a very large and prosperous business, having about a daily average of one million five hundred thousand dollars ($1,500,000) deposits, and having apparently on an average in good bills receivable, about one million three hundred thousand dollars (1,300,000); that owing to the vast number of books and the complicated system of book-keeping of this bank, and the artful manner in which its insolvency was and had been secreted by the officers of said bank, no one, defendant alleges, ex-

cept the officers having actual knowledge of the condition of the bank, could or would have supposed from any investigation that could have been made within any reasonable limit of time, that said bank was insolvent, or that any bills receivable were fictitious, fraudulent or dead paper, or that any of the representation- so made to this defendant by said president of said bank were false and untrue, or that it was the purchaser of a large amount of its own stock.

Defendant further shows that on or about December 2nd, 1896, he learned that there were rumors of the insolvency of said bank. That immediately after he had ascertained that there were rumors that the said Missouri national bank was in an embarrassed financial condition, and that there was any question as to its solvency, he began to make the most diligent efforts to ascertain the cause and foundation of said rumors and to ascertain the actual condition of said bank; that during said investigation, which was but a day prior to the suspension of said bank, the president, cashier and other officers of said bank firmly and persistently insisted that the said bank was in a good, healthy financial condition, and was perfectly solvent, as they had represented it to be; that the defendant was unable to ascertain at that time any information showing the real and actual condition of the bank beyond these representations of the officers.

Defendant further says that on December 3rd, 1896, the Comptroller of the Currency of the United States duly appointed the plaintiff as receiver of said Missouri national bank, to take charge of said bank and all of its assets, books, papers and records, and that the plaintiff immediately qualifying under said appointment, took the actual and exclusive control and possession of said bank and all its assets of every kind, nature and description, including all of its books, papers and records, and excluded every one, including the officers of said bank and this defendant, from the right or opportunity to make any inspection of said books, records, papers or assets of the said bank; that although repeatedly requested to give to this defendant and to his associates an opportunity of making a careful and complete investigation of the affairs and condition of said bank, after the same had passed into the possession of the plaintiff as such receiver, the said plaintiff persistently refused and denied such request. That after the said bank was placed in the hands of a receiver by the Comptroller of the Currency, and all the books, papers and documents containing the history of said bank and its business transactions were turned over to the receiver, defendant called upon said receiver, who is plaintiff herein, and demanded of said receiver access to said books, papers and documents of said bank, which said receiver refused; that there was no other source from which he could ascertain the real history of said bank and its business transactions or ascertain its real condition. That he frequently called upon said receiver and asked him for information as to its real history and actual condition, but that the only information he could get from said receiver, who is plaintiff herein, was that the said bank was solvent and under his said management as

such receiver would pay all its debts, liabilities and obligations without making any assessment or call upon the stockholders. That said receiver continued to make said statements that said bank was in a solvent condition, to this defendant and other stockholders and parties interested, up to the time the order of assessment was issued by the Comptroller of the Currency, as alleged in the petition;

11 that by virtue of the statements and representations made by the said receiver, this defendant was led to believe, and did believe, that the said bank was solvent and would pay all its obligations, and that its embarrassments were due to the complication of business matters and would only be temporary.

That said receiver between the time of his said appointment and the order of assessment issued by the Comptroller of the Currency, always maintained not only to this defendant, but to the creditors and stockholders of the bank, that he had full knowledge of the bank's actual condition after having made a most thorough examination, and that the assets of the said bank were sufficient to pay all obligations, liabilities and outstanding indebtedness of the said bank; that said receiver took active steps to prevent an investigation and would always contend with the creditors, stockholders and other parties interested that such steps would not only result in no good, but would tend to embarrass him in the successful settlement of the bank's affairs.

That on or about the 1st day of September, 1897, upon repeated requests, the Comptroller of the Currency of the United States gave to this defendant and his associate, Charles J. Lantry, permission to inspect the assets, books and records of said bank, and to secure all information possible to secure from the same, as to the actual condition of the bank, and also permission to see the reports of the examinations made under the direction of the comptroller and the receiver. That thereupon, for the first time since the appointment of the receiver, the defendant was permitted to, and did make a careful and thorough examination into the actual condition and affairs of the bank.

Defendant further alleges that as a result of such investigation he, for the first time, learned the truth about the actual condition of the bank and its affairs, and for the first time learned that the said representations made by the said D. V. Rieger about the condition of said bank were false, fraudulent and untrue, and that the said D. V. Rieger, when he made such statements, knew that they were false, fraudulent and untrue; that they were made by the said D. V. Rieger while acting as president of the Missouri national bank with a full knowledge of said bank and the directors and the managers thereof that they were false, fraudulent and untrue, and were made for the purpose of inducing this defendant and the said Charles J. Lantry to invest in the capital stock of said bank.

Defendant further alleges that at no time after its organization in 1891 was the Missouri national bank ever solvent or able to meet its debts. That no part of the original capital stock of said bank

12 was ever actually paid for as required by the banking laws of the United States, nor was any part of the reduced capital stock of two hundred and fifty thousand dollars ($250,000)

ever paid for. That said capital stock had in many instances been issued to irresponsible parties and worthless notes taken therefor. That at the time said bank was represented by the said D. V. Rieger to be in good, sound financial condition, the said bank had on hand and included as a part of its good assets, fraudulent, fictitious and worthless paper greatly in excess of its capital stock. That there was at that time, fraudulently concealed and covered up in paper represented to be good, fifty thousand dollars ($50,000) of said D. V. Rieger's personal indebtedness absolutely worthless; that the said bank never, from its organization, earned a dividend, but had paid out in dividends over seventy thousand dollars ($70,000) in order to fraudulently conceal and cover up the actual condition of the bank. That each and every of the representations made by the said Rieger as such president as hereinabove fully set forth and stated, were at the time they and each of them were made, absolutely false and untrue, and were well known to be false and untrue by the said Rieger at the time he made the same.

Defendant further alleges that the said D. V. Rieger, when he made these representations about the condition of the bank, well knew they were false, fraudulent and untrue, and they were made for the purpose of defrauding this defendant and inducing him to purchase the said stock that the said D. V. Rieger well knew to be absolutely worthless, and said D. V. Rieger when he made the representations to this defendant that the bank was solvent and in a good financial condition, well knew that the capital stock had never been properly issued or paid for; he knew that a large portion of said stock was claimed to be owned by said bank and knew that the bank had on hand notes and paper that were fraudulent, fictitious and worthless in a greater amount than the entire capital stock of the said bank, and knew the said bank had never earned a dividend, and knew that the said bank was and had been for a long time prior thereto hopelessly insolvent, but represented to this defendant that the bank was in a good condition as hereinbefore stated, in order to induce him to purchase the one hundred (100) shares of the capital stock of the said bank and defraud him of the said ten thousand dollars ($10,000).

Defendant further alleges that he was induced by the said statements made by the said D. V. Rieger concerning the condition of said bank, and that the bank was in good condition, to purchase said stock; that at the time of the purchase he believed said statements to be absolutely true in every particular and was governed by them and such belief.

13 Defendant further alleges and charges the fact to be that the stock so attempted to be purchased by him from said bank, and for which said certificate above referred to was issued to him, was not at the time of its attempted purchase, nor has it ever been from that time since, of any value whatever.

Defendant further says that by reason of the facts hereinabove stated and set forth, there was no consideration ever received from the said bank for the payment of the said sum of ten thousand

dollars ($10,000) to it at the time of the attempted purchase of said stock.

Defendant further alleges that immediately after he had obtained the information which he did obtain, upon full investigation under the permission of the Comptroller of the Currency as aforesaid, and on or about the 27th day of October, 1897, he called at the banking-house, the prior place of business of the said The Missouri national bank, being at the time the place where all the books, records and papers of said bank were situated and kept, and where the affairs of the bank were being adjusted by such receiver, and that at that time, finding only the receiver in possession and custody of said bank, its assets, books, records and affairs, and being unable to find any officer of said bank, defendant tendered to the plaintiff as such receiver, the said certificate of stock numbered 612, above referred to, for cancellation, notifying and informing said receiver that, owing to the fraud and deceit that had been practiced upon him by which he was induced to purchase or attempt to purchase the stock represented by said certificate, that he disaffirmed the contract of purchase or pretended purchase of such stock and demanded that the said receiver should receive the certificate and cancel it and repay this defendant the sum of ten thousand dollars ($10,000) so paid by him as aforesaid, or such proportionate part thereof as he would be entitled to receive as a creditor of said bank for that amount, all of which said tender and demand made upon the said receiver, the said receiver at that time and ever since then has continually refused to accept or accede to.

Defendant further charges the fact to be that, from the time the bank went into the hands of a receiver until the present time there has not been any officer of the said Missouri national bank living or residing within the State of Missouri upon whom any service of summons or other process could be had in any suit that might be commenced against the said Missouri national bank in the jurisdiction of the State of Missouri or any court therein, save and except only as the plaintiff, as such receiver, might represent said bank, and that since December 3rd, 1896, the said Missouri na-
14 tional bank has had no usual place or no place of business whatever in the territory of the State of Missouri where process of summons against said bank could be left or served upon any person operating such place of business for and on behalf of the bank, save and except as process might be served upon the plaintiff as such receiver.

Second.

And for a second and further defense to the petition of the plaintiff filed herein, defendant says: That by reference thereto he hereby expressly makes each and all the facts hereinabove set forth and stated in the first defense, a part of this, his second defense, and in addition thereto, alleges and sets forth the following further facts:

That prior to and during the negotiations with this defendant and said Charles J. Lantry, the president, cashier and other officers of

said bank, knowing well the actual condition of said bank and knowing the said bank was insolvent, purchased or pretended to purchase from the stockholders or alleged stockholders of the said bank, with the funds of the bank, shares of the outstanding capital stock of the bank in order to prevent exposure by the stockholders owning such shares of the actual condition of the bank and the threatened throwing of such shares on the market at prices which would advertise the insolvency of the bank to the public. That in order to prevent an open and apparent violation of law, and to deceive the public and the Comptroller of the Currency of the United States and his assistants and employés, the officers of the Missouri national bank engaged in the aforesaid transaction and transactions of buying and purchasing or attempting to buy and purchase such shares of its own stock so outstanding, would cause the certificates of such stock so purchased or pretended to be purchased, from the parties holding the same, to be endorsed by the parties to whom the certificates were issued, either in blank or in the names of the president, cashier or some one of the clerks or other parties connected with the said bank, and would then procure a delivery of such certificate so endorsed, pay for the same with money belonging to the bank or by surrendering notes held by the bank against such parties for such stock, or by payment of money and surrender of notes, and that then to account for the funds so used, the parties to whom said certificates would be assigned, or whom the bank pretended were the owners of such certificates, would make a promissory note or notes to the bank for the amount of money used in the purchase of such stock, such note or notes being payable to the bank, and unsecured except in so far as these certificates of stock were issued to secure the same; that all stock purchased or attempted to be purchased by the officers of the bank were paid for out of the funds of the bank and notes taken from these officers, agents and servants of the bank to the bank, to represent the funds so used. That each and every one of the persons engaged in this transaction and who executed any or all of these notes, was at the time, and ever since has been, absolutely, utterly and hopelessly insolvent to the full knowledge of every officer of the bank engaged in these transactions, at the time of the transactions. That such pretended and attempted purchase of each of said shares of stock was made by the bank directly with the owners or holders of such stock, or with the people in whose name such stock stood, to the knowledge of each one of the persons owning or holding said stock, or in whose name it stood, and that none of the transactions concerning the negotiations for the pretended purchase of such stock was made to or with the owners, holders, or the persons in whose name it stood, by any employees in whose name the certificates were taken or to whom the certificates were delivered in blank, save and except in the case of the president and cashier, who in such negotiations and pretended purchases were, to the knowledge of the people they were dealing with, acting for and on account of and in the name of the bank.

Defendant further alleges that in some instances, and perhaps all, the certificates of stock surrendered to the bank were cancelled and new certificates issued to these irresponsible parties who were to hold the same for the use and benefit of the bank; that owing to the fact that the entire history of these transactions so far as it appears in writing, was and is contained in the books, records and papers of the Missouri national bank in the absolute and sole custody of the plaintiff in this case, *and* therefore the defendant is unable at the present time to give a more detailed statement and history of this transaction or to state from whom all these purchases were made or to whom these certificates were assigned, or by whom held, or to whom they may have been transferred. That none of said stock was taken or purchased or procured by the bank to prevent any losses or loss upon any debt or debts previously contracted in good faith, or purchased in any way authorized by law, but the same was purchased by the bank with its funds for the purpose of preventing such stock from being sold in open market and to prevent any investigation being made as to the actual condition of the bank by the parties owning the same. That said stock so purchased would be cancelled and new certificates be issued therefor in the name of the ostensible or pretended purchaser, and all of said stock purchases were made with the funds of the bank and to the depletion of the capital stock of said bank to the extent of said
16 purchases and in violation of law. That none of said parties to whom new certificates of stock were issued ever paid anything for said stock, nor did said parties ever pay or cause to be paid the notes executed to the bank, nor did they intend to pay said notes when they were executed, because they were executed for the fraudulent purpose of concealing the said stock purchased by the bank.

Defendant further alleges that at the time of the negotiations for the purchase of said stock, and at the purchase thereof, that the said bank had purchased with the funds of the said bank in the manner above set forth, about eighty thousand dollars ($80,000) of the two hundred and fifty thousand dollars ($250,000) of the reduced capital stock of said bank.

That during said negotiations with the president and other officers of said bank, by this defendant and said Charles J. Lantry, and at the time of the purchase of said stock as hereinafter set forth, the said president and other officers of said bank represented to this defendant and to the said Charles J. Lantry, who were investigating the condition of said bank, that all of the capital stock of said bank had been subscribed for and issued to *bona fide* and actual purchasers in good faith, and was then held and owned by such parties as stockholders of said bank except an amount of said capital stock which said bank then had on hand, which had been taken in by the said bank to prevent a loss on indebtedness which had been previously contracted in good faith, and which had been taken in by the bank without violating the banking laws of the United States. That said defendant believing said statements, did then and there purchase of the bank one hundred (100) shares of the capital stock of said bank of the par

value of ten thousand dollars, for which he then and there paid the said bank the sum of ten thousand dollars ($10,000), and a certificate was issued to the said defendant by the said bank and which is numbered 612 as aforesaid.

Defendant alleges that at the time of the said purchase or attempted purchase by him of the said stock of the said bank, for which said certificate was issued, the president and other officers of the bank, in order to have the books of the bank show correctly the amount of outstanding stock, caused some or all of said parties who held the certificates of stock in their names, which had been purchased for, by and on account of the bank, to surrender enough of such certificates for cancellation to the bank, so that the certificate which was issued to this defendant could be issued therefor and in the place thereof, and that immediately upon the surrender of such certificates by such parties to the officers of the bank, and without the

17 knowledge of this defendant, said certificates were cancelled by the bank and to an amount sufficient to enable it to issue the certificate so received by the defendant, which was immediately thereafter issued to the defendant. That said parties who held said stock never at any time received the purchase-money paid by this defendant for said stock, but the same was retained and kept by the bank. That, for the reason of all the books, papers and accounts of said bank being now in the hands of the receiver of said bank, the plaintiff herein, and this defendant not having access to the same, he is unable to set forth in detail the names of the persons so surrendering their stock, and amounts held by each one respectively, but alleges that all of said stock purchased by this defendant and the said Charles J. Lantry was a part of the said stock so fraudulently purchased or attempted to be purchased and held, as hereinbefore set forth, by said bank.

Wherefore, defendant demands that this action be dismissed and that the defendant recover from the plaintiff the costs of this action.

C. N. STERRY,
ISAAC LAMBERT,
EUGENE HAGAN,
Attorneys for Defendant, C. Hood.

Cross-petition.

Comes now the defendant, C. Hood, and for his counter-claim against the plaintiff, Theodoric B. Wallace, as receiver of the Missouri National Bank of Kansas City, alleges and shows to the court the following facts, to wit:

The defendant, C. Hood, by reference thereto, hereby expressly makes and incorporates into this, his cross-petition and counter-claim, each, all and every of the facts alleged in his first and second defense in his answer hereinabove set forth contained.

Defendant further alleges and shows that, by reason of the facts stated and the fraud and deceit practiced upon him by the said Mis-

souri National Bank of Kansas City, Missouri, and its officers, he, the said defendant, has been injured to his damage in the sum of ten thousand dollars ($10,000) with interest thereon from the 18th day of April, 1896. Defendant further alleges that he has presented such claim to the plaintiff herein as such receiver, for allowance as a claim against said bank, and that the same has been rejected and refused by the plaintiff as such receiver.

Wherefore *plaintiff* prays judgment against the said Theoderic B. Wallace, as receiver of the Missouri National Bank of
18 Kansas City, Missouri, upon the facts stated in this his counter-claim and cross-petition for the sum of ten thousand dollars ($10,000) with interest thereon from the 18th day of April, 1896, and prays that said judgment may be ordered to be paid ratably by said receiver out of the assets and funds of said bank in his control and possession.

C. N. STERRY,
EUGENE HAGAN,
ISAAC LAMBERT,
Attorneys for Defendant, C. Hood, in His Counter-claim and Cross-petition.

Indorsed: No. 7543. In the circuit court of the U. S. for the district of Kansas, first division. Theoderic B. Wallace, as receiver of the Missouri National Bank of Kansas City, Missouri, plaintiff, *vs.* Calvin Hood, defendant. Amended and substituted answer. Filed Aug. 15, 1898. Geo. F. Sharitt, clerk.

* * * * * * *

United States Circuit Court for the District of Kansas.

THEODORIC B. WALLACE, as Receiver of the Missouri National Bank of Kansas City, Missouri, Plaintiff,
vs.
CALVIN S. HOOD, Defendant. } No. —.

Demurrer to Defenses and Cross-petition.

I.

Now comes plaintiff and demurs to that part of defendant's "amended and substituted answer" which is headed "first" and purports to be his "first defense" to the petition herein, and for cause shows:

I. That this is an action at law to enforce the statutory liability of defendant as a stockholder in the Missouri national bank, for the benefit of creditors of said bank, and said "first defense," if it constitutes any defense at all, is an equitable defense and cannot lawfully be set up in this case.

II. That said "first defense" is based upon alleged frauds, which were not committed by plaintiff or the creditors for whose benefit this action is brought, but were, as alleged, committed by the Missouri national bank, which is therefore a necessary party to the

issues tendered by said defense, but is not a necessary or proper party to the original action.

III. That said "first defense" does not state facts sufficient to constitute a defense to the plaintiff's cause of action stated in the petition, or to entitle defendant to any relief as against plaintiff.

19

II.

Plaintiff also demurs to that part of defendant's "amended and substituted answer" which is headed "second," and purports to be a "second and further defense" to the petition herein, and for cause shows:

I. That this is an action at law to enforce the statutory liability of defendant as a stockholder in the Missouri national bank, for the benefit of creditors of said bank, and said "second and further defense," if it constitutes any defense at all, is an equitable defense and cannot lawfully be set up in this case.

II. That said "second and further defense" is based upon alleged frauds, which were not committed by plaintiff or the creditors for whose benefit this action is brought, but were, as alleged, committed by the Missouri national bank, which is therefore a necessary party to the issues tendered by said defense, but is not a necessary or proper party to the original action.

III. That said "second and further defense" does not state facts sufficient to constitute a defense to the plaintiff's cause of action stated in the petition, or to entitle defendant to any relief as against plaintiff.

III.

Plaintiff also demurs to that part of defendant's "amended and substituted answer" which is headed "cross-petition," and for cause shows:

I. That the said "cross-petition," if it constitutes a defense or counter-claim at all, is an equitable defense or counter-claim which cannot lawfully be set up in this case, which is an action at law.

II. That said "cross-petition" is based upon alleged frauds, which were not committed by plaintiff or the creditors whom he represents in bringing this action, but were, as alleged, committed by the Missouri national bank, which is not a party to this action, and an offset or counter-claim against the bank itself cannot properly be set up by the stockholder in an action brought by the receiver to enforce the statutory liability of the stockholder.

III. That said "cross-petition" does not state facts sufficient to constitute a defense to plaintiff's cause of action as stated in his petition.

20 IV. That said "cross-petition" does not state facts sufficient to constitute a counter-claim in favor of defendant and

against plaintiff, or to entitle defendant to any relief as against plaintiff.

WILLIAM C. COCHRAN AND
J. McD. TRIMBLE,
Attorneys for Plaintiff.

Indorsed: No. 7543. United States circuit court for the district of Kansas. Theodoric B. Wallace, as receiver, etc., pl'ff, *vs.* Calvin S. Hood, def't. Demurrer to defenses and cross-petition. Filed Aug. 15, 1898. Geo. F. Sharitt, clerk. William C. Cochran and J. McD. Trimble, att'ys for plaintiff.

* * * * * * *

UNITED STATES OF AMERICA, } *ss:*
District of Kansas, }

At a term of the circuit court of the United States of America, for the district of Kansas, begun and held at the city of Leavenworth, in said district, on Monday, the 6th day of June, 1898, proceedings were had, and appear of record in words and figures as follows, to wit:

WEDNESDAY, *September* 21*st*, 1898.

THEODORIC B. WALLACE, Receiver, Plaintiff,
vs.
CALVIN HOOD, Defendant. } 7543.

Now on this 21st day of September, 1898, this case coming on for hearing upon the demurrer of plaintiff to the answer and cross-bill of the defendant and plaintiff's motion to strike out said answer and cross-bill, counsel being fully heard, and the court being advised in the premises doth sustain said demurrer, to which order of the court the defendant duly excepted at the time, and by leave of court counsel for plaintiff withdrew their motion to strike out said answer and cross-bill.

Wherefore it is by the court considered, ordered, adjudged and decreed that defendant's answer and cross-bill be and the same is hereby adjudged insufficient; to which order of the court the defendant duly excepted at the time and defendant is allowed ten days in which to file amended answer.

21 In the Circuit Court of the United States for the District of Kansas, Eastern Division.

T. B. WALLACE, Receiver, etc., Plaintiff,
vs.
C. HOOD, Defendant. } No. 7543.

Stipulation for Waiver of Jury.

Now comes the plaintiff by his attorneys William C. Cockran and C. A. Braley, and comes the defendant by his attorney of record,

Eugene Hagan, and by agreement of the parties a jury and a jury trial is hereby waived herein.

T. B. WALLACE,
By W. C. COCHRAN,
W. H. WALLACE,
J. McD. TRIMBLE, AND
C. A. BRALEY,
His Attorneys.

C. HOOD,
By C. N. STERRY,
EUGENE HAGAN, AND
ISAAC LAMBERT,
His Attorneys.

Indorsed: No. 7543. T. B. Wallace, receiver, etc., plaintiff, *vs.* C. Hood, defendant. Stipulation for waiver of jury and jury trial. Filed Dec. 15th, 1898. Geo. F. Sharitt, clerk.

* * * * * * *

UNITED STATES OF AMERICA, } ss:
District of Kansas, }

At a term of the circuit court of the United States of America, for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday the 28th day of November, proceedings were had, and appear of record in words and figures as follows, to wit:

THURSDAY, *December* 15, 1898.

Present: Hon. John A. Riner, judge.

T. B. WALLACE, as Receiver of the Missouri National Bank of Kansas City, in the State of Missouri, Plaintiff,
vs.
CALVIN HOOD, Defendant. } 7543.

This cause came on to — heard upon the petition and the evidence, the defendant being in default for an amended answer or demurrer, and was tried on submission to the court, the rights to a jury and jury trial having been waived by both parties; upon consideration whereof the court finds that the allegations of the petition are true and that the plaintiff is entitled to recover of the defendant, Calvin Hood, the sum of ten thousand dollars ($10,000) with interest thereon from the 30th day of August, 1897, at the rate of six per cent. per annum.

22 It is therefore considered and adjudged that the plaintiff recover of the said defendant, Calvin Hood, the sum of ten thousand seven hundred and seventy-five dollars ($10,775) together with interest thereon from this fifteenth day of December, 1898, and his costs herein expended taxed at $— to which finding and judgment defendant by his counsel excepts and on motion of defendant, execution is stayed for forty days, and sixty days from

this date is allowed within which to prepare and present a bill of exceptions.

In the Circuit Court of the United States for the District of Kansas, Eastern Division.

T. B. WALLACE, as Receiver of the Missouri National Bank of Kansas City, in the State of Missouri, Plaintiff,
vs.
C. HOOD, Defendant. } No. 7543.

Assignment of Errors.

The defendant in this action, C. Hood, in connection with his petition for a writ of error herein, makes the following assignment of errors, which he avers occurred upon the trial of the cause, to wit:

1st. That the court erred in sustaining the demurrer of the plaintiff, T. B. Wallace, as receiver, to the first defense contained in the amended and substituted answer of defendant herein, C. Hood.

2nd. That said court erred in sustaining the demurrer of the plaintiff, T. B. Wallace, as such receiver, to the second defense stated and set forth in the amended and substituted answer of defendant herein, C. Hood.

3rd. That said court erred in rendering a judgment in favor of plaintiff, T. B. Wallace, as such receiver, against the defendant, C. Hood, upon the sustaining of said demurrer to the defenses contained in said amended and substituted answer of defendant, C. Hood.

Wherefore the defendant, C. Hood, prays that the judgment of said court heretofore rendered against him be set aside and held for naught, and that he be restored to all things which he has lost by the occasion of said judgment.

EUGENE HAGAN,
C. N. STERRY, AND
I. E. LAMBERT,
Attorneys for Defendant.

Indorsed: No. 7543. United States circuit court for the district of Kansas, eastern division. T. B. Wallace, as receiver, etc., plaintiff, *vs.* C. Hood, defendant. Assignment of errors. Filed Jan. 24, 1899. Geo. F. Sharitt, clerk.

23 In the Circuit Court of the United States for the District of Kansas, Eastern Division.

T. B. WALLACE, as Receiver of the Missouri National Bank of Kansas City, in the State of Missouri, Plaintiff,
vs.
C. HOOD, Defendant. } No. 7543.

Petition for Writ of Error.

Comes now C. Hood, the defendant above named, by C. N. Sterry, his attorney, and complains that in the record and proceedings, and also in the rendition of the judgment in the suit wherein T. B. Wallace, as receiver of the Missouri National Bank of Kansas City, in the State of Missouri, is plaintiff, and your petitioner, C. Hood, is defendant, tried in the circuit court of the United States for the district of Kansas, eastern division, and in which a judgment was rendered against your petitioner, C. Hood, as defendant, on Thursday the 15th day of December, 1898, at the November, 1898, term of said court for the sum of $10,775 damages, and the costs of the action at $46.30, manifest error has intervened to the great damage of your petitioner, C. Hood.

Wherefore the said C. Hood prays for the allowance of a writ of error and such other process as may cause the errors (*maintained*) in the rendition of such judgment to be corrected by the United States circuit court of appeals for the eighth circuit, and for a reversal of said judgment for such errors by said United States circuit court of appeals for the eighth circuit.

EUGENE HAGAN,
C. N. STERRY, AND
I. E. LAMBERT,
Attorneys for Defendant, C. Hood.

Order Allowing Writ of Error.

A writ of error is allowed, as herein prayed for.
Dated Jan'y 24th, 1899.

AMOS M. THAYER,
Circuit Judge.

Indorsed: No. 7543. Circuit court of United States for the district of Kansas, eastern division. T. B. Wallace, as receiver, etc., plaintiff, *vs.* C. Hood, defendant. Petition for writ of error. Filed Jan. 24, 1899. Geo. F. Sharitt, clerk.

Know all men by these presents, that we, C. Hood, as principal and W. T. Soden and G. W. Newman as sureties, are held and firmly bound unto T. B. Wallace, as receiver of the Missouri National
24 Bank of Kansas City, in the State of Missouri, in the full and just sum of twenty-five thousand ($25,000.00) dollars to be

paid to the said T. B. Wallace, as receiver of the Missouri National Bank of Kansas City, in the State of Missouri, his heirs, executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals this 23rd day of Jan'y, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas, lately at the November term, 1898, of the circuit court of the United States for the district of Kansas, eastern division, in a suit depending in said court between T. B. Wallace, as receiver of the Missouri National Bank of Kansas City, in the State of Missouri, plaintiff, and C. Hood, defendant, judgment was rendered against the said C. Hood, and the said C. Hood *has* obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said T. B. Wallace, as receiver of the Missouri National Bank of Kansas City, in the State of Missouri, citing and admonishing him to be and appear in the United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, sixty days from and after the date of said citation:

Now, the condition of the above obligation is such, that if the said C. Hood shall prosecute said writ of error to effect, and answer all damages and costs, if he shall fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

C. HOOD. [SEAL.]
W. T. SODEN. [SEAL.]
G. W. NEWMAN. [SEAL.]

Sealed and delivered in the presence of—
—— ——.

Approved by—
AMOS M. THAYER,
U. S. Cir. Judge.

Jan'y 24th, 1899.

STATE OF KANSAS, } ss:
County of Lyon, }

W. T. Soden, being first duly sworn, deposes and says that he is one of the sureties above named; that he has read the above and foregoing obligation, and that he is worth the sum of twenty-five thousand dollars, above all liability and exemption.

W. T. SODEN.

Subscribed and sworn to before me this 23rd day of January, A. D. 1899.

[SEAL.] ALF. B. ROBERTS,
Notary Public in and for the County of Lyon, State of Kansas.

My notarial commission expires May 1, 1900.

25 STATE OF KANSAS, } ss:
County of Lyon, }

G. W. Newman, being first duly sworn, deposes and says that he is one of the sureties above named; that he has read the above and foregoing obligation, and that he is worth the sum of twenty-five thousand dollars, above all liability and exemption.

G. W. NEWMAN.

Subscribed and sworn to before me this 23rd day of January, A. D. 1899.

[SEAL.] ALF. B. ROBERTS,
Notary Public in and for the County of Lyon, State of Kansas.

My notarial commission expires May 1, 1900.

Indorsed: No. 7543. United States circuit court for the district of Kansas, eastern division. C. Hood, plaintiff in error, *vs.* T. B. Wallace, receiver, etc., defendant in error. Supersedeas bond for costs. Filed Jan. [illegible] 1899. Geo. F. Sharitt, clerk.

UNITED STATES OF AMERICA, } ss:
District of Kansas, }

I, Geo. F. Sharitt, clerk of the circuit court of the United States of America, for the district of Kansas, do hereby certify the foregoing to be a true, full and correct copy of the record and proceedings in said court in the case of Theoderic B. Wallace, receiver of the Missouri national bank, *vs.* Calvin Hood, defendant, No. 7543. I further certify that the original citation and writ of error are attached hereto and returned herewith.

The Seal of the Circuit Court of the United States, District of Kansas, 1862.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Topeka, in said district of Kansas, this 26th day of January, A. D. 1899.

GEO. F. SHARITT, *Clerk.*

[Cancelled 10c. revenue stamp.]

Filed Feb. 20, 1899. JOHN D. JORDAN, *Clerk.*

26 In the Circuit Court of the United States for the Eighth Circuit, May, 1899, Term.

C. J. LANTRY, Plaintiff in Error,
vs.
T. B. WALLACE, as Receiver of the Missouri National Bank of Kansas City, State of Missouri, Defendant in Error. } No. 1221.

C. HOOD, Plaintiff in Error,
vs.
T. B. WALLACE, as Receiver of the Missouri National Bank of Kansas City, State of Missouri, Defendant in Error. } No. 1222.

Stipulation.

It is hereby stipulated and agreed by and between the parties to each of the above-entitled causes, that the plaintiff in error in each of said causes may amend his assignment of errors in the record therein, by adding as a fourth assignment in error, an assignment in error as follows, to wit:

4th. That said court erred in sustaining the demurrer of the plaintiff, T. B. Wallace, as such receiver, to the cross-petition in the answer in said cause contained.

In briefing these causes, this amendment may be considered as one of the errors assigned and to be briefed.

C. N. STERRY,
EUGENE HAGAN,
Attorneys for Plaintiff in Error.
WILLIAM C. COCHRAN,
Attorney for Defendant in Error.

1222. Calvin Hood, plaintiff in error, *vs.* T. B. Wallace, as receiver, etc. Stipulation to amend record. Filed Apr. 29, 1899. John D. Jordan, clerk.

27 (*Appearance of Counsel for Plaintiff in Error.*)

And on the twentieth day of February, A. D. 1899, there was filed in the clerk's office of said circuit court of appeals an appearance of counsel for plaintiff in error in said cause in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1898.

C. HOOD, Plaintiff in Error,
vs.
T. B. WALLACE, as Receiver, &c. } No. 1222.

The clerk will enter my appearance as counsel for the plaintiff in error.

C. N. STERRY AND
ISAAC LAMBERT,
Att'ys for Pl'ff in Error.

(Endorsed:) U. S. circuit court of appeals, eighth circuit, December term, 1898. No. 1222. C. Hood, plaintiff in error, *vs.* T. B. Wallace, as receiver, &c. Appearance. Filed Feb. 20, 1899. John D. Jordan, clerk. C. N. Sterry, Isaac Lambert, counsel for pl'ff in error.

(*Appearance of Counsel for Defendant in Error.*)

And on the twenty-sixth day of April, A. D. 1899, an appearance of Mr. William C. Cochran, as counsel for the defendant in error, was filed in the clerk's office of said circuit court of appeals in said cause in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1898.

CALVIN HOOD, Plaintiff in Error,
vs.
T. B. WALLACE, as Receiver, &c. } No. 1222.

The clerk will enter my appearance as counsel for the defendant in error.

WILLIAM C. COCHRAN.

(Endorsed:) U. S. circuit court of appeals, eighth circuit, December term, 1898. No. 1222. Calvin Hood, plaintiff in error, *vs.* T. B. Wallace, as receiver, &c. Appearance. Filed Apr. 26, 1899. John D. Jordan, clerk. William C. Cochran, counsel for def't in error.

28 (*Appearance of Counsel for Defendant in Error.*)

And on the eleventh day of May, A. D. 1899, an appearance of counsel for the defendant in error was filed in the clerk's office of said circuit court of appeals in said cause in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1898.

CALVIN HOOD, Plaintiff in Error,
vs.
T. B. WALLACE, as Receiver, &c. } No. 1222.

The clerk will enter my appearance as counsel for the defendant in error.

J. McD. TRIMBLE.

(Endorsed:) U. S. circuit court of appeals, eighth circuit, December term, 1898. No. 1222. Calvin Hood, plaintiff in error, *vs.* T. B. Wallace, as receiver, &c. Appearance. Filed May 11, 1899. John D. Jordan, clerk. J. McD. Trimble, counsel for def't in error.

(*Order of Submission.*)

And on the twenty-fifth day of May, A. D. 1899, in the record of the proceedings of said circuit court of appeals is an order of submission of said cause in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1899.

THURSDAY, *May* 25, 1899.

CALVIN HOOD, Plaintiff in Error,
vs.
T. B. WALLACE, as Receiver of the Missouri National Bank. } No. 1222.

In error to the circuit court of the United States for the district of Kansas.

This cause having been called in its regular order, argument was commenced by Mr. C. N. Sterry, for plaintiff in error, and concluded by Mr. William C. Cochran, for defendant in error.

Thereupon this cause was submitted to the court upon the transcript of record from said circuit court and the briefs of counsel filed herein.

29 (*Opinion.*)

And on the thirtieth day of October, A. D. 1899, an opinion of said United States circuit court of appeals was filed in said cause in the following words, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, A. D. 1899.

CALVIN HOOD, Plaintiff in Error,
vs.
T. B. WALLACE, as Receiver of the Missouri National Bank of Kansas City, in the State of Missouri, Defendant in Error.

No. 1222. In Error to the Circuit Court of the United States for the District of Kansas.

Mr. C. N. Sterry (Mr. Eugene Hagan and Mr. I. E. Lambert were with him on the brief) for the plaintiff in error.
Mr. W. C. Cochran (Mr. J. McD. Trimble and Mr. W. H. Wallace were with him on the brief) for the defendant in error.

Before Caldwell, Sanborn, and Thayer, circuit judges.

THAYER, circuit judge, delivered the opinion of the court:

This case was submitted at the same time, by the same counsel, on the same argument, and involves the same questions which have been considered and decided in the preceding case, Lantry *v.* T. B. Wallace, as receiver of the Missouri National Bank of Kansas City, Missouri. For the reasons stated in the opinion in that case the judgment in the case in hand is affirmed, Judge Sanborn dissenting.

Filed October 30, 1899.

A true copy.
Attest: —— ——.

30 (*Judgment.*)

And on the thirtieth day of October, A. D. 1899, in the record of the proceedings of said circuit court of appeals is a judgment in said cause in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1899.

MONDAY, *October* 30, 1899.

CALVIN HOOD, Plaintiff in Error,
vs.
T. B. WALLACE, as Receiver of the Missouri National Bank of Kansas City, Missouri. } No. 1222.

In error to the circuit court of the United States for the district of Kansas.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Kansas and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause

be, and the same is hereby, affirmed with costs, and that T. B. Wallace, as receiver of the Missouri National Bank of Kansas City, Missouri, have and recover against Calvin Hood the sum of twenty dollars for his costs herein and have execution therefor.

October 30, 1899.

(*Assignments of Error.*)

And on the thirtieth day of December, A. D. 1899, assignments of error were filed in the clerk's office of said circuit court of appeals in said cause in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Eighth Circuit.

C. HOOD, as Plaintiff in Error,
vs.
T. B. WALLACE, as Receiver of the Missouri National Bank of Kansas City, in the State of Missouri, as Defendant in Error.

31 *Assignments of Error.*

Comes now C. Hood, plaintiff in error in the above-entitled cause, and complains of the defendant in error, T. B. Wallace, as receiver of the Missouri National Bank of Kansas City, in the State of Missouri, for that said T. B. Wallace, as such receiver, defendant in error in the above-entitled cause, did, on the 30th day of October, 1899, recover a judgment, by the consideration of the United States circuit court of appeals for the eighth circuit, in the above-entitled cause against the plaintiff in error, affirming the judgment of the United States circuit court for the district of Kansas, first division, theretofore entered in said cause against said C. Hood, plaintiff in error. A copy of the record in said cause in said court, duly certified, is hereto attached and made a part hereof. Plaintiff in error avers that there is error in said records and proceedings in this court in the above-entitled action in this, to wit:

1st. The United States circuit court of appeals for the eighth circuit erred in determining that the United States circuit court for the district of Kansas, first division, rightfully sustained the demurrer of the defendant, T. B. Wallace, as such receiver, to the first defense contained in the amended and substituted answer of plaintiff in error, C. Hood.

2nd. The United States circuit court of appeals for the eighth circuit erred in determining that the United States circuit court for the district of Kansas, first division, rightfully sustained the demurrer of the defendant, T. B. Wallace, as such receiver, to the second defense contained in the amended and substituted answer of plaintiff in error, C. Hood.

3rd. That said court erred in determining that the United States circuit court for the district of Kansas, first division, rightfully sustained the demurrer of the defendant in error, T. B. Wallace, as such

receiver, to the cross-petition in the amended and substituted answer of the plaintiff in error, C. Hood.

Wherefore said plaintiff in error, C. Hood, prays that a writ of error be issued in order that the errors above stated and set forth, if any there have been, may be duly corrected and full and speedy justice done the parties aforesaid in this behalf, and that the
32 plaintiff in error, C. Hood, be restored to all the rights lost by the erroneous ruling of the court herein complained of.

C. N. STERRY,
EUGENE HAGAN,
I. E. LAMBERT,
Attorneys for Plaintiff in Error.

(Endorsed:) In the United States circuit court of appeals for the eighth circuit. No. 1222. C. Hood, plaintiff in error, *vs.* T. B. Wallace, as receiver, etc., defendant in error. Assignments of error. Filed Dec. 30, 1899. John D. Jordan, clerk.

(*Supersedeas Bond.*)

And on the thirtieth day of December, A. D. 1899, a supersedeas bond on writ of error was filed in the clerk's office of said circuit court of appeals in said cause in the words and figures following, to wit:

Know all men by these presents that we, Calvin Hood, as principal, and Charles J. Lantry, as surety, are held and firmly bound unto T. B. Wallace, as receiver of the Missouri National Bank of Kansas City, Missouri, in the full and just sum of twenty-five thousand ($25,000.00) dollars, to be paid to the said T. B. Wallace, as receiver of the Missouri National Bank of Kansas City, Missouri, — heirs, executors, administrators, assigns, or successors; to which payment, well and truly — made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this eleventh day of December, in the year of our Lord one thousand eight hundred and ninety-nine (1899).

Whereas lately, at the May term, A. D. 1899, of the United States circuit court of appeals *of the United States* for the eighth circuit, in a suit pending in said court between Calvin Hood, plaintiff in error, and T. B. Wallace, as receiver of the Missouri National Bank of Kansas City, Missouri, defendant in error, a judgment was rendered against the said Calvin Hood affirming a judgment heretofore rendered in the circuit court of the United States for the district of Kansas, and the said Calvin Hood *has* obtained a writ of error in the Supreme Court of the United States to reverse the judgment in the aforesaid suit, and a citation directed to the said T. B. Wallace, receiver of the Missouri National Bank of
33 Kansas City, Missouri, citing and admonishing him to be and appear in the Supreme Court of the United States, at

the city of Washington, thirty days from and after the date of said citation:

Now, the conditions of the above obligation is such that if the said Calvin Hood shall prosecute said writ of error to effect and answer all damages and costs if he fail to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

CALVIN HOOD. [SEAL.]
CHARLES J. LANTRY. [SEAL.]

Sealed and delivered in presence of—
—— ——.

UNITED STATES OF AMERICA, } ss:
District of Kansas, }

Calvin Hood, of lawful age, being first duly sworn, upon oath deposes and says that he is the identical party whose name appears on the foregoing bond, and that he is worth more than $100,000.00 over and above all exemptions, debts, and liabilities.

CALVIN HOOD.

Subscribed and sworn to before me this eleventh day of December, 1899.

[SEAL.]

GEO. F. SHARITT,
Clerk U. S. Circuit Court, District of Kansas.

UNITED STATES OF AMERICA, } ss:
District of Kansas, }

Charles J. Lantry, of lawful age, being first duly sworn, upon oath deposes and says that he is the identical party whose name appears on the foregoing bond, and that he is worth more than $100,000.00 over and above all exemptions, debts, and liabilities.

CHARLES J. LANTRY.

Subscribed and sworn to before me this eleventh day of December, 1899.

[SEAL.]

GEO. F. SHARITT,
Clerk U. S. Circuit Court, District of Kansas.

This is to certify that I have this day examined the bond accompanying the petition in the Supreme Court of the United States for a writ of error in the case of Calvin Hood, plaintiff in error, *vs.* T. B. Wallace, receiver of the Missouri National Bank of Kansas City, Missouri, defendant in error, for twenty-five thousand
34 ($25,000.00) dollars, and in my opinion the bond is perfectly good.

12, 11, '99.

WILLIAM C. HOOK,
U. S. District Judge, District of Kansas.

Approved, to operate as a supersedeas.

DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

Dec. 18, 1899.

(Endorsed:) No. 1222. Calvin Hood, pl'ff in error, *vs.* T. B. Wallace, receiver, etc. Supersedeas bond on writ of error. Filed Dec. 30, 1899. John D. Jordan, clerk.

(*Writ of Error.*)

And on the thirtieth day of December, A. D. 1899, a writ of error was filed in the clerk's office of said circuit court of appeals in said cause, the original of which, with the clerk's return thereto, is hereto attached and herewith returned:

35 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the United States circuit court of appeals for the eighth circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said United States circuit court of appeals, before you or some of you, between Calvin Hood plaintiff in error, and T. B. Wallace, as receiver of the Missouri National Bank of Kansas City, Missouri, defendant in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal of the Supreme Court of the United States.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 18th day of December, in the year of our Lord one thousand eight hundred and ninety-nine.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] No. 1222. Calvin Hood, pl'ff in error, *vs.* T. B. Wallace, receiver, etc. Writ of error. Filed Dec. 30, 1899. John D. Jordan, clerk.

Return to Writ.

UNITED STATES OF AMERICA, *Eighth Circuit,* } *ss:*

In obedience to the command of the within writ I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, with all things concerning the same.

In testimony whereof I hereto subscribe my name and affix the seal of the United States circuit court of appeals, eighth circuit, at office, in the city of St. Louis, Missouri, this fourth day of January, A. D. 1900.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals, Eighth Circuit.

36 *Citation.*

And on the thirtieth day of December, A. D. 1899, a citation was filed in the clerk's office of said circuit court of appeals in said cause, the original of which, with admission of service endorsed thereon, is hereto attached and herewith returned:

37 UNITED STATES OF AMERICA, *ss:*

To T. B. Wallace, as receiver of the Missouri National Bank of Kansas City, Missouri, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the United States circuit court of appeals for the eighth circuit, wherein Calvin Hood is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable David J. Brewer, associate justice of the Supreme Court of the United States, this 18th day of December, in the year of our Lord one thousand eight hundred and ninety-nine.

DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] No. 1222. Calvin Hood, pl'ff in error, *vs.* T. B. Wallace, receiver, etc. Original citation. Filed Dec. 30, 1899. John D. Jordan, clerk.

DEC. 27, '99.

We hereby admit of service upon us of a copy of the within notice.

T. B. WALLACE,
Receiver of the Missouri National Bank of Kansas City, Mo.,
By J. McD. TRIMBLE,
His Attorney.

38 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing thirty-seven pages contain a true copy of the portions of the transcript of the record printed pursuant to the stipulation of the parties, and upon which record said cause was heard, and full, true, and complete copies of all proceedings and record entries, including the opinion of said circuit court of appeals, in the case of Calvin Hood, plaintiff in error, *vs.* T. B. Wallace, as receiver of the Missouri National Bank of Kansas City, in the State of Missouri, No. 1222, May term, 1899, as the same remain on file and of record in my office.

I do further certify that the original writ of error, with my return thereto, is hereto attached and herewith returned, and that a copy of said writ of error has been lodged in my office for the use of the defendant in error.

I do further certify that the original citation, with the admission of service endorsed thereon, is hereto attached and herewith returned.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of St. Louis, Missouri, in the eighth circuit, this fourth day of January, A. D. 1900.

Seal United States Circuit Court of Appeals, Eighth Circuit.

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals, Eighth Circuit.

{ Ten-cent U. S. internal-revenue stamp, canceled Jan. 4, 1900. John D. Jordan. }

Endorsed on cover: File No., 17,601. U. S. C. C. of appeals, 8th circuit. Term No., 179. Calvin Hood, plaintiff in error, *vs.* T. B. Wallace, as receiver of the Missouri National Bank of Kansas City, Mo. Filed January 8, 1900.